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U.S. Citizenship
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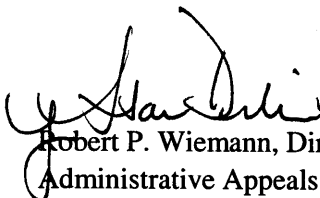
IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a coin and jewelry shop that seeks to employ the beneficiary as a special projects and public relations officer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position was not a specialty occupation. On appeal, counsel submitted a brief. The AAO dismissed the appeal reasoning that the proffered position combines the duties of a public relations and promotions manager with those of an office and administrative support worker manager and an administrative assistant, positions that do not require a baccalaureate degree in a specific specialty.

On motion, counsel asserts that the degree requirement is common to the industry in parallel positions among similar organizations, and that Citizenship and Immigration Services (CIS) has previously approved similar petitions. Counsel also states that the proposed duties are professional in nature and, thus, a baccalaureate degree is required. Counsel submits additional information and evidence in support of his assertions.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation; (6) the AAO's decision; and (7) the petitioner's motion. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a special projects and public relations officer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 14, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assisting in the planning of projects, activities, and advertising to promote the petitioner's business; writing articles, agenda items, and correspondence; providing general administrative support; and designing and producing materials and desktop publishing. The petitioner indicated that the beneficiary was qualified for the job because she possessed a Bachelor of Arts degree.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the job descriptions for a public relations and promotions manager, an office and administrative support worker manager, and an administrative assistant in the *Handbook* confirms the accuracy of the AAO's assessment to the effect that, the job duties parallel those responsibilities of those positions. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for public relations and promotions manager, office and administrative support worker manager, or administrative assistant jobs.

Regarding parallel positions in the petitioner's industry, counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of

proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the other H-1B petitions were parallel to the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submits letters from four businesses indicating that a bachelor's degree is common to the industry. It is noted that none of the writers indicates that a bachelor's degree in a specific specialty is required. Furthermore, the writers did not submit any evidence in support of their assertions. Thus, the letters have little relevance. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the text of three of the letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on motion, and the record does not contain any evidence of the petitioner's past hiring practices, this issue will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The decision of the AAO, dated January 24, 2003, is affirmed. The petition is denied.